

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.5089 of 2014

Date of decision : 21.10.2016

Smt. Bhateri Devi

.....Appellant

Versus

Jai Bhagwan and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ashok Kumar Sharma (Bhana), Advocate for appellant.

Mr. V. Ramswaroop, Advocate for respondent No.5.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-claimant against the award dated 10.12.2013, passed by learned Motor Accidents Claims Tribunal, Jind (hereinafter called the "Tribunal"), vide which appellant Smt. Bhateri Devi and respondent No.6 Smt. Kavita (both claimants before the Tribunal), have been awarded compensation to the tune of ₹9,89,000/- on account of the death of Mukesh in the motor vehicular accident which took place on 05.02.2013.

2. The present appeal has been preferred by the appellant-claimant Smt. Bhateri, the mother of the deceased, for the enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and gone through the paper-book meticulously.

4. Learned counsel for the appellant contended that the deceased was only 28 years of age. He was a young and energetic person,

but the learned Tribunal has not added any future prospects towards the income of the deceased. 50% of his income should have been added as future prospects. He further contended that no amount has been awarded to the appellant-claimant towards loss of love and affection of her son. Thus, he contended that learned Tribunal has not awarded the just compensation.

5. On the other hand, learned counsel for respondent No.5- Insurance Company contended that the deceased was merely a casual labourer having no permanent job. So, the claimants were not entitled for any future prospects towards the income of the deceased. Thus, he pleaded that just amount of compensation have been awarded by the learned Tribunal.

6. I have duly considered the aforesaid contentions.

7. As per the case of the claimants, the deceased was running a tea shop. He also used to do the agricultural work, dairy farming and used to sell the milk. The claimants have claimed that he was earning ₹ 35,000/- per month. But in the absence of any cogent evidence, the learned Tribunal has determined the income of the deceased to be ₹6000/- per month treating him as a labourer and no fault can be found with such determination of the income of the deceased. However, there is no denial to the fact that the deceased was 28 years of age at the time of the accident. He was in the prime of his youth. Even if he might be working as a casual labourer, his income was bound to increase with the passage of time as it is a known fact that the income of nobody remains stagnant throughout his life time. That is why even the minimum wages are revised periodically by the State

Government. So, the learned Tribunal was required to add the future prospects to the income of the deceased. As the deceased was 28 years of age at the time of accidental death, so 50% of his income is required to be added towards the future prospects. The total income of the deceased comes to ₹9000/- per month *i.e.* ₹1,08,000/- per annum. 1/3rd of his income was required to be deducted towards his personal and living expenses. The remainder comes to ₹72,000/-. In view of the age of the deceased, the multiplier of 17 shall be applicable. Thus, the loss of dependency comes to ₹12,24,000/-.

8. The learned Tribunal has not awarded any compensation to appellant-claimant Smt. Bhateri, the mother of the deceased, towards loss of love and affection of her son. She will be entitled to ₹ 1,00,00/- towards the loss of love and affection of her son. In this way, the enhanced amount of compensation payable to the claimants is detailed as under:-

Sr. No.	Heads of compensation	Amount of compensation awarded by the Tribunal (<i>in rupees</i>)	Amount of compensation enhanced by this Court (<i>in rupees</i>)
1.	Loss of dependency	8,64,000	12,24,000
2.	Loss of consortium to respondent No.6-claimant Smt. Kavita, widow of the deceased	1,00,000	1,00,000 (<i>not enhanced</i>)
3.	Loss of love and affection to appellant-claimant Smt. Bhateri, mother of the deceased	-	1,00,000
4.	Funeral expenses	25,000	25,000
Total		9,89,000	14,49,000

9. In this way, the claimants shall be entitled to a total some of Rs.14,49,000/-.

10. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to the claimants is enhanced to ₹ 14,49,000/- from ₹9,89,000/- as awarded by the Tribunal. The claimants shall also be entitled to interest at the rate as determined by the learned Tribunal on the enhanced amount from the date of filing the petition till realisation. The liability to pay the enhanced amount of compensation and the apportionment amongst the claimants shall remain same as determined by the learned Tribunal in the main award.

11. As the matter with respect to future prospects has been referred to the Larger Bench of the Hon'ble Apex Court in case ***National Insurance Company Vs. Pushpa, (2015) 9 SCC 166***, in order to safeguard the interest of respondent No.3-Insurance Company, the amount of compensation under the head future prospects shall be disbursed to the claimants against adequate security in the form of sufficient indemnity bonds to the satisfaction of the learned Tribunal/executing Court, wherein the claimants will undertake that if the Hon'ble Apex Court adjudicates that the casual labourers/persons not holding the permanent jobs will not be entitled to the future prospects, then they will be bound to refund the amount of future prospects received by them on moving the requisite application by the respondent-Insurance Company and the learned Tribunal will be competent to take the steps without making any reference to this Court.

21.10.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No